

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA . CRIMINAL ACTION NO.
 . 4:09-CR-122-Y
V. .
 . Fort Worth, Texas
JUAN CARLOS GAONA-RODRIGUEZ . June 2, 2010

TRANSCRIPT OF PROCEEDINGS
(Sentencing Hearing)
BEFORE THE HONORABLE TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: MR. JOSHUA T. BURGESS
United States Attorney's Office
801 Cherry Street, Suite 1700
Fort Worth, Texas 76102-6897
(817) 252-5200

For the Defendant: MR. JOHN H. READ, II
Read & Wright
900 N. Zang
Dallas, Texas 75208
(214) 760-9999

Court Reporter: MS. ANA P. WARREN
U.S. District Court Reporter
501 W. 10th Street, Room 201
Fort Worth, Texas 76102-3637
(817) 850-6681

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

P R O C E E D I N G S

(Commencing, 10:35 a.m.)

THE COURT: Before the Court this morning is Cause Number 4:09-CR-122-Y, United States of America versus Juan Carlos Gaona-Rodriguez.

Are the parties ready to proceed?

MR. BURGESS: Yes, Your Honor.

MR. READ: Yes, sir.

THE COURT: Let the record reflect that Mr. Gaona is being assisted in translation by Mike Mahler, a court certified Spanish interpreter, and he has previously been sworn.

Mr. Gaona, would you please step to the lectern along with your counsel, and would you please acknowledge your presence in court for the record by stating your full name?

DEFENDANT GAONA: Juan Carlos Gaona-Rodriguez.

THE COURT: Mr. Gaona, you appeared before Magistrate Judge Charles Bleil on January 21, 2010, at which time you entered a plea of guilty to Count 1 of the indictment charging you with possession of a controlled substance with intent to distribute, in violation of 21, United States Code, Section 841(a)(1) and (b)(1)(B).

On that date, Judge Bleil found that your plea of guilty was a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the

1 offense. You told him at that time that you understood the
2 elements of the offense, agreed to the accuracy of the factual
3 resume, and admitted that you committed all essential elements
4 of the offense. Accordingly, on February 5, 2010, I entered
5 an order accepting your plea and adjudging you guilty of the
6 crime alleged in the indictment against you.

7 This plea of guilty was taken pursuant to a plea
8 agreement, and I have reviewed that plea agreement and the
9 charge to which you have pled guilty, and I have determined
10 that that charge does adequately reflect the seriousness of
11 your actual offense behavior so that accepting the plea
12 agreement will not undermine or subvert the statutory purposes
13 of sentencing, all relevant conduct having been taken into
14 consideration in the calculation of the total offense level.
15 Therefore, the plea agreement is accepted, and the judgment
16 and sentence will be consistent with it.

17 Mr. Read, did you and your client receive in a timely
18 manner a copy of the presentence report and the addendum to
19 the report?

20 MR. READ: Yes, sir.

21 THE COURT: Did you have an opportunity to review
22 those carefully with Mr. Gaona?

23 MR. READ: Word for word.

24 THE COURT: All right, sir. Thank you.

25 Did the government receive those timely?

1 MR. BURGESS: Yes, Your Honor.

2 THE COURT: There being no unaccepted objections to
3 the fact findings in the presentence report, I adopt those
4 findings as my own.

5 There being no objections to the probation officer's
6 conclusions set forth in the report as to the appropriate
7 guideline calculations, I adopt those conclusions and
8 determine that the appropriate guideline calculations are:

9 Total offense level 30. Criminal History Category I.
10 Imprisonment range 97 to 121 months. Supervised release range
11 four to five years, and a fine range of \$15,000 to \$2 million,
12 plus, the cost of imprisonment and supervision.

13 The government has, however, filed a motion for downward
14 departure, which is granted. So the sentence will be below
15 the guideline range.

16 Mr. Read, do you wish to make any remarks on behalf of
17 Mr. Gaona before I pronounce the sentence?

18 MR. READ: Yes, sir, just a few short remarks.

19 First, good morning. Nice to see you.

20 THE COURT: Good morning, sir. Good to see you,
21 sir.

22 MR. READ: Sorry that the letters were late. We
23 tried to get them here earlier, but it is what it is, and if
24 you got to read them, okay. If you didn't, we understand.

25 I would like to remind you during this particular

1 proceeding that we did have a motion to suppress. Remember
2 that?

3 THE COURT: I do.

4 MR. READ: And remember that we actually stopped
5 during the proceedings and asked no more questions when we
6 felt that Mr. Covarrubias was committing perjury in this
7 court. My client recognized that, be it perjury or not, and
8 he would not submit himself to be a party to that, just so you
9 know. I just want to remind you.

10 And Mr. Gaona did accept his responsibility, even though
11 this case was prepared for trial, which stopped the trial the
12 Monday after we entered our plea with Mr. Covarrubias. He
13 finally made his plea, also.

14 THE COURT: Right.

15 MR. READ: So it did save the Court time. It did
16 save the Court money, and my client did accept his
17 responsibility. Sometimes they don't understand what that is.
18 The fact of the matter is he did do that, and he has problems
19 in his family with his daughter, and that was a part of why he
20 was doing what he was doing.

21 He would just request that you also give him the rehab
22 program, because he was afraid to mention that he had an
23 alcohol problem because it might be worse. So I believe that
24 was in my objections or my clarifications, and I'm sure you
25 read that.

1 THE COURT: Yes, sir.

2 MR. READ: Other than that, we accept responsibility
3 for what he's done. Thank you.

4 THE COURT: Thank you, sir.

5 Mr. Gaona, do you wish to speak on your own behalf or
6 present any information in mitigation of your sentence?

7 DEFENDANT GAONA: Well, just to forgive me for my
8 having done this, and I ask forgiveness of my family as well,
9 and that's all.

10 THE COURT: Thank you, sir.

11 Does the government wish to be heard?

12 MR. BURGESS: No, Your Honor. Thank you.

13 THE COURT: Then I will now state the sentence
14 determined pursuant to Title 18, United States Code, Section
15 3553(a), treating the sentencing guidelines issued by the
16 sentencing commission as advisory only under U.S. v. Booker.

17 In arriving at a reasonable sentence, I have taken into
18 account primarily the conduct admitted by the defendant in his
19 factual resume and those matters required to be considered by
20 Section 3553(a).

21 The attorneys will have a final chance to make legal
22 objections before sentence is finally imposed. This is a
23 downward departure pursuant to Sentencing Guideline Section
24 5K1.1 based upon the motion of the government.

25 Pursuant to the Sentencing Reform Act of 1984 as amended,

1 it is the judgment of the Court that the defendant, Juan
2 Carlos Gaona-Rodriguez, in Case Number 4:09-CR-122-Y-(03), be
3 committed to the Federal Bureau of Prisons for a period of 60
4 months. Restitution is not ordered because there is no victim
5 other than society at large. I do not order a fine or cost of
6 incarceration because Mr. Gaona does not have the financial
7 resources or future earning capacity to pay a fine or cost of
8 incarceration.

9 Upon release from imprisonment, Mr. Gaona shall be on
10 supervised release for a term of four years. However,
11 pursuant to 18, United States Code, Section 3583(d), as a
12 condition of supervised release upon the completion of the
13 sentence of imprisonment, Mr. Gaona shall be surrendered by
14 the Federal Bureau of Prisons to a duly authorized immigration
15 official for deportation in accordance with the established
16 procedures provided by the Immigration and Nationality Act, 8,
17 United States Code, Sections 1101 and following.

18 As a condition of supervised release, if ordered deported,
19 Mr. Gaona shall remain outside the United States. In the
20 event he is not deported immediately upon release from
21 imprisonment or should he ever be within the United States
22 during any portion of the term of supervised release, he shall
23 also comply with the standard conditions recommended by the
24 sentencing commission and comply with the following additional
25 conditions. Those additional conditions have been set out in

1 a separate order signed by me this day and offered to
2 Mr. Gaona for his review and signature. He has now returned
3 that to me with his signature indicating his receipt of the
4 additional terms, his understanding of them, and his waiver of
5 having them read here in open court. In addition, he is
6 ordered to pay a mandatory special assessment of \$100.

7 This sentence is a downward departure based upon the
8 motion of the government. In determining the sentence, I have
9 considered the advisory guidelines as well as statutory
10 directives listed in 18, USC, Section 3553(a). A sentence of
11 60 months is sufficient but not greater than necessary to
12 achieve the Court's sentencing objectives of punishment,
13 deterrence, and protection of the public.

14 I have now stated the sentence and the reasons.
15 Therefore, I call upon the parties to indicate any legal
16 reason why sentence may not be imposed as stated?

17 MR. BURGESS: Nothing from the United States, Your
18 Honor.

19 MR. READ: Nothing from the defense, Your Honor.

20 THE COURT: Sentence is then imposed as stated.

21 Mr. Gaona, you have waived your right to appeal your
22 sentence and to complain of it in a collateral proceeding.
23 However, you have reserved from that waiver the right to
24 appeal any errors in arithmetic that I may have made in
25 calculating your total offense level or your criminal history

1 category. You also retain the right to complain on appeal or
2 in a collateral proceeding of any involuntariness there may
3 have been in the giving of your plea of guilty or your waiver
4 of appellate rights. And you retain the right to complain of
5 ineffective assistance of counsel. If you decide to appeal on
6 any ground, you do have the right to apply for leave to appeal
7 in forma pauperis if you're unable to pay the cost of an
8 appeal

9 Do you have any questions, sir?

10 DEFENDANT GAONA: No --

11 THE COURT: Sir, pardon me?

12 DEFENDANT GAONA: Thank you.

13 THE COURT: Yes, sir. You're remanded to the custody
14 of the United States Marshal.

15 MR. READ: May we be excused?

16 THE COURT: Yes, sir.

17 MR. READ: Thank you, sir. It's always good to see
18 you, Judge.

19 THE COURT: Good to see you, sir. Thank you.

20 MR. READ: I don't want any more four week trials.

21 THE COURT: Sir?

22 MR. READ: I don't want any more four week trials.

23 THE COURT: Me neither.

24 (End of proceedings, 10:45 a.m.)

25 -oOo-

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter, and that the transcript was prepared by me and under my supervision.

s/ Ana P. Warren
Ana P. Warren, CSR #2302
U.S. District Court Reporter

July 27, 2010
Date

-oOo-